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UNO Website: Faculty Senate - Professional Conduct Committee - Rules and Procedures

UNO Faculty Senate University of Nebraska at Omaha

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Professional Conduct Committee

Rules and Procedures

INTRODUCTION

The *Bylaws of the Board of Regents of the University of Nebraska* (October, 1989, revision) provide to the faculty governing bodies on each campus the authority to establish a professional conduct committee regents bylaws, Section 4.15, 1989. At a meeting duly called on the 9th day of October, 1991, the Faculty Senate of the University of Nebraska at Omaha has adopted these rules of procedure, has thereby established a method for electing a five-member **professional conduct committee**, and has specified the manner in which alternate members will be identified. These rules were amended by the Faculty Senate of the University of Nebraska at Omaha on March 11, 1998, to comply with United States Public Health Service requirements related to scientific misconduct.

The policies formulated within this document apply to all professional staff activities at the University of Nebraska at Omaha (UNO). The term "professional staff" means "persons engaged in teaching, extension work, research, service and administration" at UNO (regents bylaws, sections 3.1 and 4.15.3, 1989, and as hereinafter amended).

The charge to the Professional Conduct Committee is to carry out its functions in an equitable, efficient, and consistent manner in conformity with these rules of procedure.

1. MEMBERSHIP

1.1 Selection of Members and Alternates

The Professional Conduct Committee shall consist of five (5) tenured UNO faculty members holding the rank of assistant professor or above. The committee members shall be elected by October 15th of each year by at least a plurality of the faculty senate from a list of nominees provided by the faculty senate Rules Committee. The faculty senate is encouraged to have wide representation on the Professional Conduct Committee. The committee shall select its own chairperson. The committee members shall be classified with respect to the time for which they shall severally hold office by dividing them into three (3) classes, each consisting, as nearly as may be, of one-third of the whole number of the committee, and all members and alternates shall hold office until their successors are elected and qualified. At the meeting held for the election of the first committee, the members of the first class shall be elected for a term of one year; the members of the second class shall be elected for a term of two years; the members of the third class shall be elected for a term of three years; and at each annual election the successors to the class of members whose terms shall expire in that year shall be elected to hold office for a term of three years so that the term of office of one class of members shall expire each year. For the initial election only, alternates shall be elected for terms of one, two, and three years in the same fashion and number as that of committee members. Thereafter, retiring members of the committee shall serve as alternates for three years following the end of their term. In cases of resignation, the faculty senate shall elect a replacement to complete the term of the committee member or alternate who has resigned. If a committee member is unable to serve on a specific case, due to a conflict of interest or other good cause, the president of the faculty senate shall appoint the replacement member to serve for that specific case from the list of alternate members.

1.2 Selection of Additional Member(s)

In special circumstances such as those cases involving alleged scientific misconduct, the committee chair is authorized, with the approval of the faculty senate president, Executive Committee, and Cabinet, to appoint additional member(s) when special expertise is needed to evaluate allegations. These additional member(s) should be individual(s) who do not have real or apparent conflicts of interest in the case, are unbiased, and have the necessary expertise to evaluate the evidence and issues related to the allegation, interview the principals and key witnesses, and conduct the inquiry. These individual(s) may be scientists, subject matter experts, administrators, lawyers, or other qualified persons, and they may be from inside or outside the institution.

1.3 Disqualification of Committee Members

No member of the committee shall participate in any proceedings of the committee if he/she is a member of the department of either the complainant(s) or the respondent(s), or if he/she would not be capable of impartially considering the evidence and issues before the committee in the proceedings. In the event that one or more members of the committee disqualify themselves from participating in a particular set of proceedings, the president of the faculty senate shall choose a replacement committee member from the alternates.

2. STANDARDS OF PROFESSIONAL CONDUCT SUBJECT TO COMMITTEE JURISDICTION

The committee shall have jurisdiction and authority to investigate complaints charging violations of standards of professional conduct brought against professional staff at the University of Nebraska at Omaha. "Standards of professional conduct" shall be those set forth in the *Bylaws of the Board of Regents of the University of Nebraska* including, but not limited to, section 3.4 (Conditions of Employment for the Professional Staff), section 3.8 (Conflicts of Interest), section 3.9 (Political Activities of Employees), section 3.10 (Patent Policy), section 3.11 (Sale of Books and Supplies to Students; Copyrights and Royalties), and section 4.1 (Academic Responsibilities), along with any standards of professional rights and

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duties as prescribed by the Board of Regents of the University of Nebraska, federal, state, and local laws, and generally accepted professional rights and duties of the academic community. The committee also shall have the authority to interpret the standards, rights, and duties of professional conduct for members of the professional staff.

3. PRESUMPTION OF INNOCENCE

Any professional staff member alleged to have committed an act of professional misconduct who enters proceedings established herein shall be presumed innocent by the committee. The burden of proving professional misconduct shall be upon the complainant and the accompanying investigation and inquiry, if any.

4. RULES OF PROCEDURE

4.1 Initiation of Proceedings

Complaints of professional misconduct may be made by any person and shall be directed to the chairperson of the Professional Conduct Committee. Such a complaint must be in writing and shall conform with the guidelines for submitting complaints contained herein at item 8. If the allegation involves the safety of human or animal subjects or violations of regulations in the use of bio-hazardous materials, the committee shall inform the dean of graduate studies and research as to the nature of the allegations so that he/she can inform the University of Nebraska Institutional Review Board for the Protection of Human Research Subjects, the UNMC/UNO Animal Review Committee, or the UNMC/UNO Biosafety Committee that such allegations have been made. The chairperson of the committee shall notify the respondent(s) that the graduate dean has been so informed.

The scope of authority of the committee shall extend only to activities which clearly involve alleged misconduct associated with UNO employment. Meetings of the committee shall be scheduled when all five (5) members are able to be present. All proceedings of the committee shall be kept confidential, and every effort shall be made to keep confidential the names of the complainant(s) and of the respondent(s), except when reasonable inquiry and investigation require disclosure. Detailed documentation collected during the inquiry shall be securely maintained by the faculty senate. Such records shall be made available, when federal law so requires, to authorized personnel of the federal government. All meetings of the committee shall be closed to the public.

4.2 Sufficiency of Complaint and Determination of Jurisdiction - Inquiry

Immediately upon receiving a complaint, the chairperson of the committee shall provide written notification to the person(s) filing the complaint(s) that the allegation has been received, the date on which the complaint(s) was received, and a copy of the Professional Conduct Committee Rules of Procedure. The committee chairperson shall likewise send written notification to the professional staff member(s) named in the allegation and specifying the nature of the allegation, when the allegation was received; a copy of the Professional Conduct Committee Rules of procedure will be included.

The chairperson shall call a meeting of the committee within seven (7) days after a written complaint is received. If the use of alternate members is required, the reformed committee shall meet within seven (7) days of the first meeting. The written complaint, along with any documentary evidence submitted, shall be considered for the purpose of determining (a) whether or not such proceedings fall within the jurisdiction of the committee, and (b) whether or not the complaint is sufficient to warrant formal proceedings before the committee. If the committee finds that the complaint is insufficient or that the complaint lies outside its jurisdiction, it will communicate such a finding in writing to the complainant and respondent setting forth the reasons for the committee's finding. If the complainant disagrees with the committee's finding, he/she shall have seven (7) days to resubmit or amend the complaint for reconsideration by the committee. Upon receipt of a resubmitted or amended complaint, the committee shall meet to reconsider its original decision.

The committee shall gather information in order to determine whether an allegation or apparent instance of misconduct warrants an investigation. A written inquiry report shall be prepared that states what evidence was reviewed, summarizes relevant interviews, and includes the conclusions of the committee. The individual(s) against whom the allegation(s) was made shall be given a copy of the inquiry report of the committee. If he/she comments on that report, his/her comments shall be made a part of the record. This report shall be delivered to the complainant(s), the respondent(s), the president of the faculty senate, and if the university is required to notify and/or provide a report to any federal regulatory agency to the chancellor or his/her designee. The period of inquiry should be completed within sixty (60) calendar days of the receipt of the complaint unless circumstances clearly warrant a longer time period. If the inquiry takes longer than sixty (60) calendar days, the inquiry report of the committee shall include documentation of the reasons for exceeding sixty (60) calendar days.

4.3 Investigation

4.3.1 Formulation of Statement of Charges

The committee shall begin its investigation of alleged charges within thirty (30) calendar days of the completion of the inquiry. The committee shall provide the complainant a written draft investigation statement which describes (a) the specific standards of professional conduct that are alleged to have been violated and (b) the specific actions alleged which, if substantiated, constitute a violation of those standards. The complainant shall have seven (7) days to deliver to the chairperson of the committee written recommendations for amendments or revisions to the investigation statement. The committee shall have seven (7) days to adopt any amended investigation statement. The final investigation statement shall be sent to the complainant and the respondent. At the same time, the committee shall notify the complainant and respondent, in writing, when and where they will be requested to meet with the committee.

4.3.2 Conduct of Investigative Meetings

A tape-recorded record of the investigative proceedings shall be made and the record securely retained by the committee in the UNO faculty senate office. After an initial investigative meeting at which only the complainant, the respondent, and any counsel or advisor are present, the committee may hold further investigative meetings of the committee, at which the complainant, respondent, and relevant witnesses may be present. Witnesses will be present and interviewed one at a time. The committee chairperson shall preside over the meeting, but all members of the committee may participate in the questioning of the complainant(s), the respondent(s), and the witnesses. During the investigative meetings with the committee, the complainant(s) and respondent(s) may be assisted by legal counsel or by an advisor of his/her choice. The role of counsel or advisor during the investigative meeting shall be limited to assisting the individual and, unless the committee permits, the counsel or advisor shall not directly question witnesses or participate in the discussion. The committee may request the University of Nebraska to provide legal counsel to the committee. The committee may also request the advice and assistance of appropriate professional consultants (e.g., a psychiatrist, a

technical expert, an ethicist, an accountant, experts within a particular discipline). The committee also may ask other persons who appear to have knowledge of the matter under investigation to meet with the committee. The complainant, the respondent, and the committee shall exchange with each other at least four (4) days prior to the meetings a list of the names, addresses, and telephone numbers of all of the witnesses each has requested to appear before the committee.

All persons meeting with the committee will be requested to respond to questions by the committee and give testimony relevant to the statement of charges. Any person meeting with the committee may submit a written statement.

4.3.3 Tentative Findings of Fact

As soon as reasonably possible after the conclusion of the investigative meetings described in section 4.3.2., the committee shall meet and draft tentative findings of fact and recommendations. A copy of the tentative findings of fact and the recommendations shall be delivered to the complainant(s) and the respondent(s). They shall be given seven (7) days to submit written responses thereto. Other persons who met with the committee during an investigative meeting shall receive those portions of the findings of fact which summarize their testimony, and they also shall be given seven (7) days to submit written responses thereto.

4.3.4 Formal Hearing

The committee shall give written notice to the respondent and the complainant that he/she has the right to a formal hearing before the committee to refute the tentative findings of fact and/or request reconsideration of the tentative recommendations made by the committee. The request for the formal hearing shall be made in writing to the chairperson of the committee within seven (7) days of receipt of such notice. Upon receipt of such a request, the committee shall conduct a hearing which shall commence within fifteen (15) days of the request. The complainant and the respondent shall be given at least seven (7) days advance written notice of the date, time, and place of such a hearing. The hearing shall be conducted in accordance with the procedure prescribed below. If no request for a formal hearing is received, the committee shall proceed to write and adopt its final report in accordance with the provisions in sections 4.3.5. and 4.3.6.

The procedure at the formal hearing shall be generally that of an investigative hearing. The hearing shall be closed. A tape-recording of the hearing proceedings shall be made and the record securely retained by the committee in the UNO faculty senate office. The usual order of events for the formal hearing shall be as follows:

- (a) The complainant and/or legal counsel or advisor shall present evidence in support of the statement of charges.
- (b) The respondent and/or legal counsel or advisor may present evidence refuting the statement of charges and/or tentative findings of fact.
- (c) The complainant and/or legal counsel or advisor may present rebuttal evidence.
- (d) The complainant and the respondent and/or legal counsels or advisors shall be afforded the right to cross-examine witnesses called by the other party and to object to testimony and evidence presented by the other party.
- (e) The complainant and the respondent and/or legal counsels or advisors may present closing arguments.

The chairperson of the Professional Conduct Committee shall moderate all discussion and questioning. The committee shall not be bound by the formal rules of evidence applicable to judicial proceedings in the courts of Nebraska; however, only evidence which possesses substantiating value commonly accepted by reasonable persons in the conduct of their affairs shall be admissible. Evidence and argument which is repetitious or irrelevant may be excluded.

4.3.5 Final Report

As soon as reasonably possible after conclusion of the procedures described above, the committee shall meet and adopt its final report. This committee meeting shall be scheduled such that all five (5) members are able to be present. At least four (4) members must concur that the preponderance of the evidence supports an allegation in order to sustain any individual charge. All other committee decisions shall be reached by majority vote of the committee members. The final report of the committee shall contain at a minimum the following:

- (a) the investigation statement, which will include the specific standards of professional conduct that are alleged to have been violated and the alleged actions which violated the standards;
- (b) findings of fact relating to the statement of charges;
- (c) the committee's conclusions, supported by a preponderance of the evidence, regarding whether the respondent committed an act or acts of professional misconduct; and
- (d) the committee's recommendations for action based upon its findings of fact and conclusions.

4.3.6 Investigation Time Requirements

The committee shall begin its investigation of alleged charges within thirty (30) calendar days of the completion of the inquiry and shall make all attempts to conclude the investigation and issue the final report within one hundred twenty (120) calendar days of beginning the investigation. If the committee determines, at the end of ninety (90) calendar days, that it cannot complete its investigation and related activities within the one hundred twenty (120) calendar day period, it must advise the faculty senate president of this determination. The chancellor shall also be advised of the potential delay if federal regulations require the university to request for an extension of time from the Office of Scientific Inquiry. If an extension of time is necessary and if the chancellor is required by federal regulations to submit an interim report to a federal agency, the committee shall prepare a written report which shall include the committee's progress to date, an explanation for the delay, and an estimate for the date of completion. The anticipation of an extension of time shall be communicated in writing to the complainant(s) and the respondent(s).

4.4 Committee Recommendations

Recommendations of the committee may include the following:

- (a) if the allegations are not sustained, the respondent(s) is exonerated. When appropriate, the committee may include a plan of action designed to restore the reputation of those under investigation.
- (b) if the allegations are sustained, recommendations may include one or more of the following:
 - (1) censure of the respondent(s), including a written letter of censure placed in the respondent's(s') personnel file;
 - (2) restitution or redress of the consequences of the professional misconduct;
 - (3) removal of the respondent(s) from an administrative position;
 - (4) alteration in the assignment of duties of the respondent(s);
 - (5) non-reappointment of the respondent(s) at the end of a specific-term appointment; and/or
 - (6) termination of the respondent's(s') appointment.

4.5 Withdrawal of Complaint

A complaint or allegation may be withdrawn at any time by the person(s) submitting the complaint. If the complaint or allegation is withdrawn, the committee shall write a final report which shall include the investigation statement, the specific standards of professional conduct that are alleged to have been violated and the alleged actions which violated the standards, the committee's findings of fact, and the committee's conclusions. When appropriate, the committee will design a plan of action to restore the reputation of those under investigation.

4.6 Resignation of Respondent

If the respondent resigns or otherwise terminates his/her relationship with the university, the committee shall write a final report which shall include the investigation statement, the specific standards of professional conduct that are alleged to have been violated and the alleged actions which violated the standards, the committee's findings of fact, and the committee's conclusions. When appropriate, the committee will design a plan of action to restore the reputation of those under investigation.

4.7 Transmission of Notices

For purposes herein, notices shall be deemed received when they are personally delivered or are deposited in the U.S. mail with first class postage pre-paid and are properly addressed to the individual's current residential address on file with UNO's Office of Personnel Services.

4.8 Role of the President of the Faculty Senate

The president of the faculty senate shall be informed of all actions taken by the committee including all advice and recommendations given to the chancellor or other university administrators by the committee.

5. DELIVERY OF THE FINAL REPORT AND DISPOSITION OF RECOMMENDATIONS

The final report of the committee shall be delivered to the UNO chancellor, the president of the faculty senate, the complainant(s) and the respondent(s). The chancellor or other university officers will be requested to carry out the recommended sanctions, if any, in accordance with the bylaws and policies of the board of regents and any collective bargaining agreement then in effect with the board of regents.

A copy of all filings, committee documents, and a record of all proceedings and deliberations of the committee shall be retained and secured by the UNO faculty senate. The final report shall not be made public, except in response to a subpoena or other judicial process. It may, however, be delivered to any federal regulatory agency which by law is entitled to such delivery.

The chancellor, or his/her designee, shall deliver, within thirty (30) days, a written response to the final report to the chairperson of the committee and the president of the faculty senate. The chancellor's response shall include any action taken or yet to be taken by the chancellor pursuant to the committee's recommendations. If the chancellor fails or refuses to act upon the committee's recommendations, the written response shall include reasons for such failure or refusal.

6. INTERIM ADMINISTRATIVE ACTION

If at any time during the period of inquiry or investigation, the committee believes that interim administrative actions should be taken to protect the welfare of human or animal subjects of research, prevent inappropriate use of funds, or otherwise protect the interests of the public and the university, the committee chairperson shall so inform the chancellor and the president of the faculty senate. When warranted, the chancellor or his/her designee shall notify the director of the Office of Scientific Integrity (OSI) as prescribed in 42 C.F.R., 104 (b)(1-5) or 42 C.F.R., 50.103 (d) (11) and (12). When there is a reasonable indication of possible criminal offense, the chancellor shall notify OSI within 24 hours. If the allegation involves the safety of human or animal subjects or violations of regulations in the use of biohazardous materials, the committee shall inform the dean of graduate studies and research of the nature of the allegations so that he/she can inform the Institutional Review Board, the Animal Review Committee, or the Biosafety Committee that such allegations have been made. The chairperson of the committee shall notify the respondent that the graduate dean has been so informed.

7. SCIENTIFIC MISCONDUCT

The following additional policy and associated procedures concerning scientific misconduct apply to all individuals at UNO engaged in research that is supported by or for which support is requested from the United States Public Health Service (PHS). The PHS regulation at 42 C.F.R., Part 50, Subpart A, or any document that may supersede 42 C.F.R., Part 50, Subpart A, applies to any research, research training, or research-related grant or cooperative agreement with PHS. This policy applies to any person paid by, under the control of, or affiliated with UNO, such as scientists, trainees, technicians and other staff members, students, fellows, and guest researchers.

7.1 Definition of Scientific Misconduct

Scientific misconduct or misconduct in science means fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research. It does not include honest error or honest differences in interpretations or judgments of data.

7.2 Investigative Expertise

For inquiries dealing with scientific misconduct, it is the responsibility of the chancellor or his/her designee in consultation with the chair of the Professional Conduct Committee to secure necessary and appropriate expertise to carry out a thorough and authoritative evaluation of the relevant evidence in any inquiry or investigation. Members may be added to the committee in accord with procedures detailed in section 1.2.

7.3 Reporting to ORI

7.3.1 Initial Reporting

The decision to initiate an investigation must be reported in writing to the director, Office of Research Integrity (ORI), PHS, on or before the date the investigation begins. At a minimum, the notification should include the name of the person(s) against whom the allegations have been made, the general nature of the allegation as it relates to the PHS definition of scientific misconduct, and the PHS applications or grant number(s) involved. ORI must also be notified of the final outcome of the investigation and must be provided with a copy of the investigation report. Any significant variations from the provisions of the institutional policies and procedures should be explained in any reports submitted to ORI.

7.3.2 Premature Termination of Inquiry

If the committee plans to terminate an inquiry or investigation for any reason without completing all relevant requirements of the PHS regulation, the committee chairperson shall inform the chancellor and the president of the faculty senate, and the chancellor or his/her designee shall submit a report of the planned termination to ORI, including a description of the reasons for the proposed termination.

7.4 Other Considerations

7.4.1 Reputation of Those Found Innocent

If the committee finds no misconduct and ORI concurs, after consulting with the respondent, the committee chair shall inform the chancellor and the president of the faculty senate, and the chancellor or his/her designee shall undertake a reasonable effort to restore the respondent's reputation. Depending on the particular circumstances, the chancellor or his/her designee should consider notifying those individuals aware of or involved in the investigation of the final outcome, publicizing the final outcome in fora in which the allegation of scientific misconduct was previously publicized, or expunging all reference to the scientific misconduct allegation from the respondent's personnel file.

7.4.2 Protection of the Whistle Blower and Others

Regardless of whether UNO or ORI determines that scientific misconduct occurred, the committee chair will undertake reasonable effort to protect whistle blowers who made allegations of scientific misconduct in good faith and others who cooperate in good faith with inquiries and investigations of such allegations. Upon completion of an investigation, the chancellor will determine, after consulting with the whistle blower, what steps, if any, are needed to restore the position or reputation of the whistle blower. The committee chair or chancellor's designee will be responsible for implementing any steps the chancellor recommends. The committee chair will also take appropriate steps during the inquiry and investigation to prevent any retaliation against the whistle blower.

8. GUIDELINES FOR SUBMITTING COMPLAINTS TO THE UNO PROFESSIONAL CONDUCT COMMITTEE

1. Indicate your name, office address, home address, and telephone numbers.
2. Name the professional staff member(s) of the University of Nebraska at Omaha against whom the complaint is being lodged. Provide titles, departments, addresses, and telephone numbers (if known).
3. Name any other agency, organization, UNO committee, or UNO administrator, if any, to whom you previously submitted this complaint, and explain the current status of your proceedings with any such person or group.
4. State your complaint clearly and completely. Explain why you feel there is sufficient reason to lodge the complaint, and list the specific actions, including the place(s) and date(s) (if known) when the infraction(s) occurred; the names, office and home addresses and telephone numbers of witnesses; and other documents or facts which you think support your allegation(s).
5. Sign and date each page of the written complaint.

9. AMENDMENT OF PROFESSIONAL CONDUCT COMMITTEE RULES OF PROCEDURE

These rules may be amended by motion duly made and seconded at any business meeting of the UNO faculty senate. Any such amendment shall become effective upon a successful majority vote of eligible faculty senate members at the business meeting next following the motion to amend.